IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2006

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THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.2870 of 2004
and WPMP.Nos. 3366 of 2004,
2498 of 2005 and 28879 of 2005

A. Ramasamy ... Petitioner

Vs.

1. The District Revenue Officer, (Stamps)
Office of the District Revenue Officer,
Coimbatore,
Coimbatore District.

2. The Special Tahsildar, (Stamps)
Tiruppur,
Coimbatore District.

3. The Sub-registrar,
Nallur,
Tiruppur,
Coimbatore District .. Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated therein.

* * *

For petitioner : Mr.C.Prakasam
For respondents : Mr.M.Mahalingam - G.A.

* * *

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorari, to call for the entire records in so far as it relates to the impugned order passed by the first respondent in his proceedings No.MU.Pa.No.5286/Thi/2002, dated 03.02.2004, and quash the same.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. It is the case of the petitioner that during the years 1992-

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1995, he was residing at Chitoor in Kerala State. In the year 1994, he had purchased lands in Tiruppur, Coimbatore District, in the State of Tamil Nadu in S.No.582 in veerapandi village, to the extent of 1.38 acres and in S.No.584 in veerapandi village, to the extent of 76 cents along with 3 cents in common and in S.No.583 in veerapandi to the extent of 1.48 acres. Since the petitioner had been residing at Chitoor, he had registered the sale deed at the office of the Sub-registrar, Chitoor, on 05.10.1994. The petitioner had received original documents on payment of the necessary stamp duty and the charges related to the registration of the documents.

4. The petitioner further states that after the purchase of the said lands in the year 1994 one Mr.Kaliappa filed a suit O.S.No.504 of 1995 against the petitioner for declaring that the said lands belonged to him. The said suit O.S.No.504 of 1995 is pending on the file of the learned District Munsif Court, Tiruppur. During the trial, the petitioner had wanted to mark the original sale deed to prove his title. The plaintiff in O.S.No.504 of 1995, Mr.Kaliappa, had objected to the marking of the sale deed, since he had alleged that the stamp duty was insufficient.

5. The learned District Munsif referred the sale deed to the Special Deputy Collector (Stamps), Coimbatore, for determining and collect the difference of stamp duty and penalty after adjudication, as per Sections 19-B and 47-A of the Indian Stamp Act,1899. The first respondent has passed the impugned order in his proceedings No.Mu.Pa.No.5286/Thi/2002, dated 03.02.2004, stating that the petitioner should pay Rs.7,51,972/- as the deficit stamp duty payable by him. Challenging the said order of the first respondent, the present writ petition has been filed.

6. The learned counsel appearing for the petitioner points out that the Section 19-B(4) and the proviso thereto and Section 47-A(3) and the proviso thereto state that the Collector does not have the power or jurisdiction in entertaining such a reference from the District Munsif Court, Tiruppur. However, the learned counsel appearing for the respondents points out that there is an appeal remedy available under the Act which has not been availed of and instead, the petitioner has rushed to this Court only with a malafide intention of avoiding the deficit Stamp duty.

7. It is also seen from the affidavit filed by the writ petitioner in support of the writ petition that he had filed WP.No.46480 of 2002 challenging the communication sent from the District Munsif Court,Tirupur, to the first respondent. However, the said writ petition had been withdrawn subsequently. The petitioner had filed Writ Petition.No.3085 of 2003 forbearing the respondents from hearing the matter under Section 47-A of the Indian Stamp Act,1899, as per the communication of the District Munsif Court,

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Tiruppur. However, since an order came to be passed by the respondents in the proceedings, dated 28.02.2003, a further writ petition had been filed before this court challenging the said order in W.P.No.7682 of 2003. Following the filing of the said writ petition the earlier W.P .No.3085 of 2003 had been withdrawn. In W.P.No.7682 of 2003, this court had passed an order, dated 27.10.2003, quashing the impugned order challenged in the said writ petition and consequently directed the first respondent therein to pass a fresh order under Section 19-B, read with Section 47-A, of the Indian Stamp Act,1899. Based on the said direction, an order had been passed by the first respondent in his proceedings No.Mu.Pa.No.5286/Thi/2002, dated 03.02.2004, which is challenged before this court in the present writ petition.

8. In the impugned order, dated 03.02.2004, it is stated that the petitioner could file an appeal against the said order under Section 47-A(5) of the Indian Stamp Act, 1899, within 60 days from the date of passing of the said order. However, the petitioner instead of filing an appeal, as stated in the impugned order of the first respondent, has filed the present writ petition challenging the same.

9. Even though the contention of the writ petitioner is that the respondents in the writ petition have no jurisdiction or power to pass the impugned order as it is barred by limitation as per the provisions of Section 19-B & 47-A of the Indian Stamp Act,1899, this court is of the view that nothing would prevent the petitioner from raising the issue of jurisdiction before the appellate authority or forum.

10. It is clear from the various decisions of this court, as well as of the Apex Court, that once an effective alternate remedy exists, this court would be justified in refusing to invoke the extraordinary powers under Article 226 of the Constitution of India unless the facts and circumstances of the case warrant such an interference. However, in the present case, no such extraordinary circumstances seem to exist to invoke the powers vested in this court under Article 226 of the Constitution of India.

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11. The main grievance of the petitioner is that the impugned order, dated 03.02.2004, had been passed by the first respondent without considering the issues of limitation and jurisdiction raised by the petitioner. Even if it is found that such issues had not been substantially considered by the respondents, the same could be raised by the petitioner by way of an appeal as provided under law . In such circumstances, this court is of the considered view that the petitioner , if so advised, could avail the alternate remedy available to him under law. Therefore, the petitioner is permitted to

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file an appeal before the concerned authority within four weeks from the date of receipt of a copy of this order. On such an appeal being filed the authority concerned may dispose of the same on merits and in accordance with law, as expeditiously as possible, not later than eight weeks from the date of filing of the said appeal.

With the above directions the writ petition is disposed of. Consequently, the connected WPMPs are closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssm

To
1. The District Revenue Officer, (Stamps)
Office of the District Revenue Officer,
Coimbatore,
Coimbatore District.

2. The Special Tahsildar, (Stamps)
Tiruppur,
Coimbatore District.

3. The Sub-registrar,
Nallur,
Tiruppur,
Coimbatore District

+1cc to Mr.C.Prakasam, Advocate Sr 26245
+1cc to the Govt. Pleader SR 26254

TEJ (CO)
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